IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1258 OF 2004

Hamir Naran Varia ..Appellant

versus

Maharashtra Housing and Area Development Authority & Anr. ..Respondents

Mr. R. S. Tripathi for the Appellant.

Mr. V. B. Sakhare, AGP for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 5TH JULY,2005

ORAL ORDER :

1. This appeal was kept for admission and final hearing at the same time. Heard Advocate for the Appellant and the Respondents.

2. Suit of the plaintiff came to be dismissed both on merits as well as on legal question regarding service of statutory notice upon MHADA under Section 173 of the MHADA Act.

3. Counsel for the appellant tried to contend that the notice dated 12.11.1987, copy of which was shown to me (page 84 of the appeal memo) is

statutory notice. The lower court has gone through this notice and has rightly came to the conclusion that it is not a statutory notice. By no stretch of imagination this can be considered as a statutory notice under Section 173 of MHADA Act, therefore finding of the lower court in that regard against the appellant is perfectly justified. No interference is called for.

4. So far as merits are concerned, the attempt of the appellant is to get alternate premises from MHADA. He is trying to contend that there was a room on 5th floor. In his evidence he has given description of the said room on the basis of the suggestions put to him and what he admitted is as under:

> It is true that the dimensions of the structure on the 5th floor was 6 ft. height towards one side and 3 ft height on other side i.e. sloping side.

Then in the earlier part of his evidence he has admitted that there was a room No. 23 on the 4th floor and he denied the suggestion that this particular portion on the 5th floor to which the appellant is referring as a room was accessible from and through room No. 23.

5. The case of the appellant was rightly rejected and disbelieved by the court because this structure on the so-called 5th floor which has height of 6 ft. on one side and 3 ft. on the other side, cannot be construed as a room in order to grab the premises from MHADA in the new reconstructed building. There is absolutely no substance in this appeal. It is dismissed along with Civil Application. No order as to costs.

5.7.2005 (D.G. DESHPANDE, J.)